

216226

STATE OF SOUTH CAROLINA

(Caption of Case)

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

## COVER SHEET

Happy Rabbit, LP on behalf of Windridge  
Townhomes,  
Complainant,

v.

Alpine Utilities, Inc.,  
Defendant.DOCKET  
NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Telephone: 252-3300

Address: Post Office Box 8416

Fax: 771-2410

Columbia, SC 29202

Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

## DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

## INDUSTRY (Check one)

- ☐ Electric  
☐ Electric/Gas  
☐ Electric/Telecommunications  
☐ Electric/Water  
☐ Electric/Water/Telecom.  
☐ Electric/Water/Sewer  
☐ Gas  
☐ Railroad  
☒ Sewer  
☐ Telecommunications  
☐ Transportation  
☐ Water  
☐ Water/Sewer  
☐ Administrative Matter  
☐ Other: \_\_\_\_\_

## NATURE OF ACTION (Check all that apply)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Affidavit                 | <input type="checkbox"/> Letter                            | <input type="checkbox"/> Request                   |
| <input type="checkbox"/> Agreement                 | <input type="checkbox"/> Memorandum                        | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer                    | <input type="checkbox"/> Motion                            | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review          | <input type="checkbox"/> Objection                         | <input type="checkbox"/> Resale Agreement          |
| <input type="checkbox"/> Application               | <input type="checkbox"/> Petition                          | <input type="checkbox"/> Resale Amendment          |
| <input type="checkbox"/> Brief                     | <input type="checkbox"/> Petition for Reconsideration      | <input type="checkbox"/> Reservation Letter        |
| <input type="checkbox"/> Certificate               | <input type="checkbox"/> Petition for Rulemaking           | <input checked="" type="checkbox"/> Response       |
| <input type="checkbox"/> Comments                  | <input type="checkbox"/> Petition for Rule to Show Cause   | <input type="checkbox"/> Response to Discovery     |
| <input type="checkbox"/> Complaint                 | <input type="checkbox"/> Petition to Intervene             | <input type="checkbox"/> Return to Petition        |
| <input type="checkbox"/> Consent Order             | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation               |
| <input type="checkbox"/> Discovery                 | <input type="checkbox"/> Prefiled Testimony                | <input type="checkbox"/> Subpoena                  |
| <input type="checkbox"/> Exhibit                   | <input type="checkbox"/> Promotion                         | <input type="checkbox"/> Tariff                    |
| <input type="checkbox"/> Expedited Consideration   | <input type="checkbox"/> Proposed Order                    | <input type="checkbox"/> Other: _____              |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest                           |  |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit             |  |
| <input type="checkbox"/> Late-Filed Exhibit        | <input type="checkbox"/> Report                            |  |

Print Form

Reset Form

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
RANDOLPH R. LOWELL  
ELIZABETH ZECK\*  
BENJAMIN P. MUSTIAN  
MICHAEL R. BURCHSTEAD  
ANDREW J. MACLEOD

AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

TRACEY C. GREEN  
ALAN WILSON  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TX

April 8, 2009

**VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RECEIVED  
2009 APR 8 PM 4:05  
PUBLIC SERVICE  
COMMISSION

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;  
Docket No. 2008-360-S

Dear Mr. Terreni:

I am writing in response to Happy Rabbit, LP's ("Happy Rabbit") April 2, 2009 letter regarding the complaint filed by Mrs. Carolyn L. Cook, the April 2, 2009 letter filed by the South Carolina Office of Regulatory Staff ("ORS") in this matter, and Happy Rabbit's arguments with respect to the jurisdiction of the Public Service Commission of South Carolina ("Commission").<sup>1</sup> Therein, Happy Rabbit states that the "Commission must hear the willful overcharge Complaint under R. 105-533(3) (*sic*) *in pari materia* with § 27-33-50 S.C. Code Ann. (1976, as Amended)."

Alpine initially responds that Happy Rabbit's current Complaint does not contain a claim of a "willful overcharge" or a request for a refund of monetary damages.<sup>2</sup> See Alpine Response to Motion to Conform, p. 6. Furthermore, neither Happy Rabbit nor Mrs. Cook have made any assertion of fact which would support its claim that Alpine has willfully overcharged these admitted customers. In its letter dated April 2, 2009, ORS corroborates this position by stating "[w]hile the complainants allege that they have been overcharged and seek relief under 26 S. C.

<sup>1</sup> In the event that Alpine does not herein directly dispute a claim, statement, representation or characterization by Happy Rabbit, such omission is neither an acquiescence to any of Happy Rabbit's claims, statements, representations, or characterizations nor a waiver of any position previously asserted by Alpine.

<sup>2</sup> Alpine notes that Happy Rabbit's Complaint does not raise any assertion of a "willful overcharge" and that any such claim is therefore not presently before the Commission. While Happy Rabbit has filed a Motion to Conform to Proof (and now a Motion to Amend the Complaint) to include such a claim, same have not yet been ruled upon by the Commission.

Code Ann. Regs. 103.533 (3), no allegation has been made that the rates charged were not the tariffed rates approved by the Commission.” Therefore, Happy Rabbit’s assertion of a “willful overcharge” in an attempt to infer Commission jurisdiction over a matter arising under the Landlord-Tenant Act is unavailing.

Happy Rabbit also attempts to invoke Commission jurisdiction in this matter by stating that the Commission must take into consideration the general laws of the state of South Carolina and read Section 27-33-50 with R. 103-533.3 “*in pari materia*” thereby conferring on the Commission jurisdiction to decide the matter. Alpine asserts that Happy Rabbit’s application of the doctrine of *in pari materia* to this proceeding is erroneous. See Alpine Reply to Response to Motion for Summary Judgment, p. 6.

For the reasons set forth herein as well as those set forth in its other filings in this docket, Alpine respectfully requests that the Commission dismiss the instant Complaint filed by Happy Rabbit in the above-referenced docket. If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

BPM/cf  
Enclosures

cc: Nanette S. Edwards, Esquire  
Richard L. Whitt, Esquire

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2008-360-S**

RECEIVED  
2009 APR -8 PM 1:05  
SOUTH CAROLINA  
PUBLIC SERVICE  
COMMISSION

Happy Rabbit, LP on behalf of Windridge, )  
Townhomes, )  
 )  
Complainant )  
 )  
v. )  
 )  
Alpine Utilities, Inc., )  
 )  
Defendant. )  
\_\_\_\_\_ )

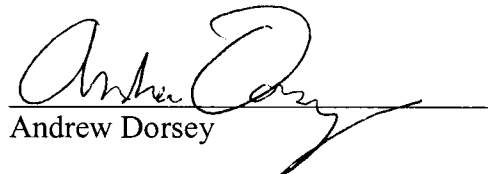
**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Defendant's Response to Happy Rabbit Letter Dated April 2, 2009** via hand delivery to the address below:

Richard L. Whitt, Esquire  
**Austin & Rogers, P.A.**  
508 Hampton Street, Suite 300  
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced document by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

  
Andrew Dorsey

Columbia, South Carolina  
This 8<sup>th</sup> day of April, 2009.